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EXAMINER

ALIE, GHASSEM

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/532,353	Applicant(s) NYSTROM ET AL.	
	Examiner GHASSEM ALIE	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-41 is/are pending in the application.
- 4a) Of the above claim(s) 37-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-36 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 41 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claim 41, the specification does not disclose, “the operation of at least the lever (12) or the button (13) is tolerant towards deviating relative positions of the handle sections (15, 16).” The specification does not disclose how the operation of the lever 12 or the button 13 is tolerant deviating relative positions of the handle sections. It is not clear how the handle sections are expected to move relative to each other while they are permanently welded together.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 32-36 and 41 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 32, "the lever or button is located upon a locking pin, acting as the axle for the lever or button, which is secured in only one of the handle section" is not accurate and confusing. Firstly, it is not clear whether the lever or the pin is secured only to the handle. Secondly, it is not clear how the lever, button or the pin is

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only secured to one of the handle sections while the handle sections are permanently welded or glued together as a single piece. In this case, the lever 12, and the button 13, or locking pin 23 also directly or indirectly is secured to the other handle section 15. If the handles are permanently joined together as a single piece, the lever, button or the pin 23 also is connected to the handle as a whole and handle portions. In addition, the pin 23 appears to be a simple pin, as shown in Fig. 2 of the instant application. Therefore, it is not clear how the pin is secured to pocket or one handle portion without being secured to the other handle portion. In other words, it is not clear how the pin 23 is locked to the only one of the handle portions. In addition, the specification teaches that the pin 23 which is called "a locking pin" is pushed through the hold 35 of the other handle section 15. In this case, the handle section 15 is involved in securing the pin 23 to the handle.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 32-35 and 41, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe et al. (5,738,064), hereinafter Lowe, in view of Dohse et al. (5,065,476), hereinafter Dohse. Regarding claims 32 and 33, as best understood, Lowe teaches a handheld engine powered tool 10 including a pivoting lever 38 a pivoting button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of

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at least two handle sections 48, 50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are made of plastic and are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54 which is formed inside the handle sections inside the leak proof joint. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe does not explicitly teach that that lever or button is secured in only one of the handle sections. However, Dohse teaches a handle 3 including two handle portions 27, 28. Dohse also teaches a throttle lever 11 and a lever lock or safety button 13 are pivotally attached to only one of the handle portions 27, so that the functions of the pivotable elements are separated from the alignment of the first handle section relative to the second handle section. It should be noted that the lever 11 and safety button 13 are secured to the handle section 27 via locking pins that acting as the axle for the lever or button, as shown in Figs. 5 and 8. The pins do not contact the other handle portion 28. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, with the pivoting mechanism, as taught by Dohse, in order to pivotally connect the lever and the button to the handle in a manner that the lever and the handle are only secured to one side of the handle rather than both sides of the handle and reduce the cost of molding and parts or as an alternative way that produces the same result.

Regarding claims 34 and 35, Lowe, as modified by Doshe, teaches that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. It appears that the safety button in Lowe has to be

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inherently bushed or pressed in order to increase the throttle of the engine by the throttle lever. In addition, Dohse teaches that teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed.

Regarding claim 41, as best understood, Lowe, as modified by Doshe, teaches that the operation of at least the lever or the button is tolerant towards deviating relative positions of the handle sections.

To the degree that it could be argued that Lowe and Dohse do not teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button, the rejection below is applied.

7. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lowe in view of Dohse, as applied to claim 32, and in further view of Wolf (5,215,049). Regarding claim 34, Lowe does not explicitly teach that the button stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. However, Wolf teaches a power tool having a throttle lever 16 and a safety button 17 having an arm moving when the button is pressed. Wolf also teaches that the arm inhibiting the movement of the lever when the button is not pressed. Wolf also teaches that lever 16 and the button 17 are pivotally secured to a handle. Wolf also teaches that the button 17 stops the operator from increasing the throttle of the engine if the operator is holding around the handle and the safety button pressed. See Fig. 3 in Wolf. It would have been obvious to a person of ordinary skill in the art to provide Lowe's apparatus, as modified

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above, with the arm, as taught by Wolf, in order to ensure that the engine operates only when the lever and the button are simultaneously pressed.

8. Claim 36, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable Lowe in view of Dohse and in further view of Yoho (3,494,431). Regarding claim 35, as best understood, Lowe teaches a handheld engine powered tool 10 including a pivoting lever 38 a pivoting button 40 for controlling the power of the tool. Lowe also teaches that the lever 38 controls the throttle of the engine and the button is a safety button. Lowe also teaches that the handle is made of at least two handle sections 48, 50 and the lever and the button are connected to the handle. Lowe also teaches that the handle sections 48, 50 are made of plastic and are permanently joined together as so to form a leak-inhibiting joint therebetween such that a portion of the handle forms a fuel tank 54. It should be noted that Lowe teaches that handle sections 48, 50 are vibrationally welded together to produce strong and air-tight joints. See col. 5, lines 5-10 in Lowe.

Lowe, as modified by above, does not explicitly teach a specific pivotal connection of the pivoting elements to the second handle section. For example, Lowe, as modified by Nakayama, does not explicitly teach a pivotal connection that includes a support section with a pocket, and the locking pin that acts as an axle for the pivotable element is inserted in a hole in the pivoting element. However, the use of different securing means or mechanisms for a trigger lever, button, or the like is old and well known in the art. In this case, e.g., Yoho teaches a handle section 54B has a support section in a shape of a pocket. Yoho also teaches a pin 45 is inserted through the hole of a trigger 44 and in the two openings of the support section or the pocket. Yoho also teaches that the diameter of the hole is larger than the

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diameter of the locking pin. See Fig. 6 in Yoho. It would have been obvious to a person of ordinary skill in the art to provide Lowe's power tool, as modified above, with a fastening or securing means, as taught by Yoho, in order to secure the lever to the second handle section by an alternative mechanism that produces the same result and pivotally connects the lever to the handle. It should be noted that the use of different fastening means or securing means that produce the same result are art-recognized equivalents and it is within the skill of a person of ordinary skill in the art to substitute one for another.

Response to Amendment

9. Applicant's arguments that the purpose for having the components like Dohse's lever and button connected to one of the handle section is to move one of the handle portion relative to the other handle portion is not persuasive. However, it is in a knowledge generally available to one of the ordinary skill in the art that when the lever or button is only secured to one of the handle sections, the time to assemble the lever or button to the handle portions is reduced, in addition to reduction of the cost for producing the parts and material needed to mount the button or the lever to both handle sections.

Applicant's argument that Dohse does not explicitly teach that the lever or button 11 is only secured to the handle section or shell 27 is not persuasive. Firstly, as stated above, the instant invention does not teach explicitly teach that the lever or button is "only" secured to the one of the handle sections. Secondly, Dohse clearly shows in Fig. 5 that the lever 11 is secured to the handle portion 27. In fact, Fig. 5 in Dohse shows the relationship between the lever and the handle sections much better than the instant invention. The instant invention

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does not shows how the lever is only secured to of the handle portions. The instant invention does not show the lever within the two handle portions.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information

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for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Ali/

Primary Examiner, Art Unit 3724

October 19, 2010